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| SHD Paraphrased Regulations - Food Stamps 230 Citizenship-Aliens-Residency |
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230-1

A noncitizen is ineligible for FS until acceptable documentation is provided unless:

- (A) The county welfare department (CWD) has submitted a copy of a document provided by the household to INS for verification. Pending such verification, the CWD cannot delay, deny, reduce or terminate the individual's benefits on the basis of the individual's immigration status; or
- (B) The applicant or CWD has submitted a request to a federal agency for verification of information that bears on the individual's eligible noncitizen's status. The CWD shall certify the individual pending the results of the investigation for up to six months from the date of the original request for verification.

(§63-300.55(b)(4), effective June 1, 2001, renumbered to §63-300.5(e)(2)(D) effective February 21, 2002)

230-2

The county welfare department (CWD) shall provide noncitizen applicants with a reasonable opportunity to submit acceptable documentation of their noncitizen status by the 30th day following the date of application. A reasonable opportunity must be at least 10 days from the date of the CWD's request for an acceptable document. When the noncitizen applicant is not provided with a reasonable opportunity by the 30th day following the date of application, the CWD must provide the household with benefits no later than 30 days following the date of application, provided the household is otherwise eligible. (§63-300.55(b)(5), effective June 1, 2001, renumbered to §63-300.5(e)(2)(E) effective February 21, 2002)

231-1

When a household's statement is questionable that one or more of its members are United States citizens, the household shall be asked to provide acceptable verification. Acceptable forms of verification include birth certificates, religious records, certificates of citizenship or naturalization provided by the Immigration and Naturalization Service or United States passports. (§63-300.532(a), renumbered to §63-300.5(g) effective February 21, 2002)

231-2

Participation in the FS Program is limited to individuals who are either United States (U.S.) citizens or eligible noncitizens.

For the purpose of qualifying as a U.S. citizen, the U.S. is defined as the 50 states and the District of Columbia, Puerto Rico, Guam, and the Virgin Islands. Additionally, citizens of American Samoa, Swain's Island and the Northern Mariana Islands who reside in the U.S. shall be considered to have met the citizenship eligibility requirements.

(§63-405, effective November 1, 1998)

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232-1A

Between November 1, 1998 and March 2, 2000, state regulations provided as follows:

Noncitizens who are lawful residents of the U.S. are considered "qualified noncitizens" for FS purposes when they meet the criteria set forth in §63-405.11. They are potentially eligible for federal FS if they meet the eligibility criteria set forth in §§63-405.12 and .13.

A "qualified noncitizen" is a person who is:

- .111 Lawfully admitted to the U.S. for permanent residence under the Immigration and Nationality Act (INA), with Immigration and Naturalization Service (INS) documentation consisting of an INS I-551; an I-327 "Re-entry permit"; a foreign passport stamped with entry indicating temporary evidence of lawful permanent residence status, or documentation from INS that clearly identifies the noncitizen as a legal permanent resident under §245 of the INA.
- .112 A refugee under §207 of the INA, with INS Form I-94 annotated with §207 of the INA.
- .113 An asylee under §208 of the INA, with INS Form I-94 annotated with §208 of the INA.
- .114 A noncitizen who had deportation withheld under §243(h) of the INA (before April 1, 1997) or under §241(b)(3) of the INA on or after April 1, 1997, with INS Form I-94 annotated with those INA sections.
- .115 A Cuban or Haitian entrant as defined in §501(e) of the Refugee Education Assistance Act of 1980.
- .116 A conditional entrant under §203(a)(7) of the INA as in effect prior to April 1, 1980 with INS Form I-94 annotated with "Paroled as a refugee" or "Paroled as an asylee".
- .117 A parolee under §212(d)(5) of the INA for at least one year, with INS Form I-94 annotated with §212(d)(5) or §207; INS Form I-512 annotated with §212(d)(5); INS Form I-551 annotated with M93; or INS Form I-688B annotated with §274a.12(a)(4) or (c)(11).
- .118 A battered spouse and/or unmarried dependent child and/or child of a battered parent, per Handbook §63-405.5.

(§63-405.11)

The regulations set forth above denied benefits to certain individuals eligible for federal FS benefits. Those benefits are to be restored, in the amount to which the FS household

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is eligible under §63-405.11, retroactive to November 1, 1998 or the date of the household's application, whichever is later. (§63-032.3, effective March 2, 2000)

232-1B

A noncitizen who is a lawful resident of the U.S. and meets any of the following requirements is eligible for participation in the federal FS Program:

(a) §63-405.11, qualified noncitizen, and §63-405.12, time limited eligibility (7-year limit)

or

(b) §63-405.11, qualified noncitizen, §63-405.13 Indefinite Eligibility

or

(c) §63-405.2, Indefinite Eligibility

.11 A QUALIFIED NONCITIZEN IS:

.111 A person who is lawfully admitted to the U.S. for permanent residence under the Immigration and Nationality Act (INA).

.112 A refugee under §207 of the INA.

.113 An asylee under §208 of the INA.

.114 A noncitizen who had deportation withheld under §243(h) of the INA (before April 1, 1997, or under §241(b)(3) of the INA on or after April 1, 1997).

.115 A Cuban or Haitian entrant as defined in §501(e) of the Refugee Education Assistance Act of 1980.

.116 A conditional entrant under §203(a)(7) of the INA as in effect before April 1, 1980.

.117 A parolee under §212(d)(5) of the INA for at least one year.

.118 An abused/battered spouse and/or unmarried dependent child and/or child of an abused/battered parent and/or parent of an abused/battered child as specified in §63-405.5.

(§63-405.1, issued March 2, 2000, and to be applied retroactive to November 1, 1998, per §63-032.3)

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232-1C

The following noncitizens are potentially eligible for seven years after being admitted or granted status, if they are one of the qualified noncitizens specified in §63-405.11:

- .121 A refugee under §207 of the INA.
- .122 An asylee under §208 of the INA.
- .123 A person whose deportation has been withheld, under §243(h) of the INA (pre April 1, 1997) or §241(b)(3) of the INA (on or after April 1, 1997).
- .124 A Cuban or Haitian entrant under §501(e) of the Refugee, Education Assistance Act of 1980.
- .125 An Amerasian immigrant under §584 of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.

(§63-405.12, issued February 1, 1999 and effective November 1, 1998 per §63-031.2, and subject to minor technical revisions effective March 2, 2000)

232-1D

Between November 1, 1998 and March 2, 2000, state regulations provided as follows:

As long as they are a qualified noncitizen under §63-405.11, the following noncitizens are potentially eligible for federal FS.

- .131 A person who can be credited with 40 qualifying quarters of coverage, per §63-405.4.
- .132 A veteran, his/her spouse, the unmarried dependent child of the veteran, or the unmarried surviving spouse of a veteran, per §63-405.3.
- .133 A person under 18 years of age who was lawfully residing in the U.S. on August 22, 1996.
- .134 A person who was lawfully residing in the U.S. on August 22, 1996 and who is disabled or blind but not receiving SSI.
- .135 A person who was lawfully in the U.S. on August 22, 1996 and was 65 years or older at that time.

(§63-405.13, issued February 1, 1999 and effective November 1, 1998 per §63-031.2)

The regulations set forth above denied benefits to certain eligible FS households. Benefits are to be restored effective November 1, 1998 (or the date of the household's

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application, if later) in accord with current §63-405.13, in the amount to which the household is eligible. (§63-032.3, effective March 2, 2000)

232-2A

Federal law (the Agricultural Research, Extension and Education and Reform Act of 1998, or AREERA) was signed into law on June 23, 1998. It restored federal FS eligibility for certain noncitizens who were no longer FS eligible under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, or PRWORA. PRWORA was modified by the FS Reauthorization Act of 2002.

Qualified citizens (as defined in §431 of PRWORA) who meet one of the following criteria may be eligible for the federal FS program effective November 1, 1998.

- o Blind or disabled noncitizens who were legally residing in the U.S. on August 22, 1996. Effective October 1, 2002, the date of legal residence for these noncitizens is irrelevant.
- o Elderly (i.e., at least 65 years of age by August 22, 1996) noncitizens who were legally residing in the U.S. on August 22, 1996.
- o Children under 18 years of age who were legally residing in the U.S. on August 22, 1996. Effective October 1, 2003, the date of legal residence is irrelevant.
- o Refugees, asylees, Cuban/Haitian entrants, persons whose deportation is withheld, and Amerasians, for seven years after entry into the U.S.

In addition, the following noncitizens are potentially eligible for federal FS benefits for an indefinite period of time, even if they are not qualified noncitizens.

- o Hmong or Highland Laotian tribal members who aided U.S. personnel during the Vietnam War if they are lawfully residing in the U.S., and their spouses, widows and unmarried dependent children.
- o Cross-border Native Americans.

Effective April 1, 2003, legal noncitizens who have been in the U.S. For five or more years are potentially eligible for federal FS. (All-County Letter (ACL) No. 98-76, September 25, 1998, implementing Public Law (PL) 105-185, June 23, 1998; All-County Information Notice I-56-02, July 25, 2002, implementing the FS Reauthorization Act of 2002)

232-2B

Federal FS benefits are restored to three categories of legal non-citizens over a three-step phase-in process.

On October 1, 2002, Public Law (P.L.) 107-171 §4401 (a)(i) restores legal noncitizens who are disabled to federal benefits regardless of date of entry into the United States.

The definition of “disability” under The Food Stamp Reauthorization Act of 2002 is blind or disabled (as defined in paragraph (2) or (3) of §1614(a) of the Social Security Act (42 United States Code (USC) §1382c(a)). The Food and Nutrition Service (FNS) issued Administrative Notice 02-39 stating that this means “receives blind or disability benefits”. The FNS further states that the benefit program must use the same disability criteria as the Supplemental Security Income (SSI) program (See §§63-102e(1)(B) through (K). Note that CAPI meets this criteria.

The definition of disability for Legal non-citizens is more stringent than disability requirements for resource limits or exemptions from work registration requirements. §63-405.134 previously required a physician’s statement as verification of disability for qualified noncitizens. Although the regulations regarding noncitizens residing in the U.S. prior to August 22, 1996 have not changed, federal guidance regarding the restoration of noncitizens who arrived in the country on or after August 22, 1996 makes it clear that receipt of benefits is required rather than a physician’s statement.

The resource limit for households with a disabled member is raised from \$2,000 to \$3,000 to match that of households with an elderly member. The definition of disabled is different from that discussed in partial restoration of noncitizens. (See §§63-102(e)(1)(B) through (K)).

(All-County Letter No. 02-67, September 3, 2002, implementing PL 107-171, §§4401(a)(i) and 4107)

232-2C

Federal law provides that:

Any individual who is lawfully residing in the United States, who was a member of a Hmong or Highland Laotian tribe at the time that the tribe rendered assistance to United States personnel [emphasis added] by taking part in a military or rescue operation during the Vietnam era (as defined in Title 38, United States Code (USC) §101); as well as the spouse or unmarried dependent children of such person, or the unmarried surviving spouse of such deceased person; meets alien residency requirements for participation in the FS Program. (8 USC §1602(a)(2)(K), §402(a)(2) of the PRWORA of 1996; §63-405.211, February 1, 1999, to be effective November 1, 1998, per §63-031.2)

232-4

The legal resident alien can meet the 40 calendar quarters of qualifying employment by using his/her own quarters. The alien may also combine his/her own quarters with the quarters of a spouse (for work performed during their marriage, as long as the spouses remain married to each other, or one spouse is deceased), or by combining the quarters

from his/her own employment, the spouse's employment and the employment of a parent (for work performed while the alien was under the age of 18, including when the alien was unborn). After January 1, 1997, quarters are not counted if the individual received any federal [emphasis added] means-tested public benefits. (§63-405.112(e), changed to §63-405.4, March 2, 2000)

The CDSS has issued detailed regulations describing how the rule, paraphrased above, should be implemented by the counties. The counties are instructed to ask the following:

- "411 How long has the applicant noncitizen, and if necessary, the applicant noncitizen's parents (up through the quarter the applicant turned 18, including credits earned before the child was born) and/or spouse (for work performed during their marriage and the noncitizen remains married to such spouse or such spouse is deceased) lived in the United States? If the period of time is more than 10 years, it is not necessary to ask question B (Section 63-405.412). Skip to question C (Section 63-405.413). However, if the period of time is less than 10 years, question B (Section 63-405.412) shall be asked.
- "412 Did the applicant noncitizen, the applicant noncitizen's parents (up through the quarter the applicant turned 18, including credits earned before the child was born) and/or spouse (for work performed during their marriage and the noncitizen remains married to such spouse or such spouse is deceased) ever perform work for a United States business or the U.S. government, while not residing in the United States? If so, for how many calendar quarters or years? If an applicant noncitizen neither lived in the U.S. at least 10 years, or worked for a United States business or the U.S. government while living in another country; or it the combination of years lived in the United States and worked for a United States business or the U.S. government while living in another country totals less than 10 years, then the applicant noncitizen shall be denied food stamps. If the total is at least 10 years, then question C (Section 63-405.413) shall be asked.
- "413 In how many of the years reported in answer to question A (Section 63-405.411) did the applicant noncitizen, the applicant noncitizen's parents (up through the quarter the applicant turned 18, including credits earned before the child was born) and/or spouse (for work performed during their marriage and the noncitizen remains married to such spouse or such spouse is deceased) earn money through work? If the answer is at least 10 years, or if the answer combined with the answer to question B (Section 63-405.412) is at least 10 years, then the earnings of the noncitizen whose eligibility is in question shall be verified before eligibility is established, except as specified in Section 63-405.112(g)(2). If the total is less than 10 years, then the applicant noncitizen shall be denied food stamps."

(§63-405.4, effective March 2, 2000)

232-4A

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In determining whether legal immigrants who are not U.S. citizens have met the 40-qualifying quarter work history exception, the following policies apply:

1. The term "quarter" means three calendar months ending with March 31, June 30, September 30, and December 31 of any year.
2. For 1978 and later, "credits" are based solely on the total yearly amount of earnings. "Credits" were formerly called "quarters of coverage". The amount of earnings needed to earn a credit is;

| Year | Amount | |
|------|--------|---|
| 1978 | \$250 | |
| 1979 | 260 | |
| 1980 | 290 | |
| 1981 | 310 | |
| 1982 | 340 | |
| 1983 | 370 | |
| 1984 | 390 | |
| 1985 | 410 | |
| 1986 | 440 | |
| 1987 | 460 | |
| 1988 | 470 | |
| 1989 | 500 | |
| 1990 | 520 | |
| 1991 | 540 | |
| 1992 | 570 | |
| 1993 | 590 | |
| 1994 | 620 | |
| 1995 | 630 | |
| 1996 | 640 | |
| 1997 | 670 | |
| 1998 | 700 | |
| 1999 | 740 | |
| 2000 | 780 | |
| 2001 | 830 | (per All-County Information Notice (ACIN) No. I-105-00, |
| | | November 2, 2000) |
| 2002 | 870 | (per ACIN No. I-91-01, November 1, 2001) |

A current year quarter may be used. Use the current year amount to determine the number of quarters, but do not credit calendar quarters that have not ended.

3. Prior to 1978, one credit was earned for each quarter in which an individual was paid \$50 or more; four credits were earned for each year net earnings from self-employment were \$400; one credit was earned for each \$100 in agricultural

wages paid in each year from 1955 through 1977, limited to four credits in any year.

(All-County Letter (ACL) No. 96-68, December 11, 1996, Attachment 1; ACL No. 97-78, December 15, 1997; ACL No. 98-91, December 3, 1998; Handbook §63-405.112(e)(2)(A), revised to Handbook §63-405.43)

232-4B

A legal noncitizen may be credited with a quarter of coverage, in order to meet the 40 credit requirement, even if Social Security taxes were not withheld from the individual's wages. However, satisfactory evidence of such earnings must be presented. Acceptable documentation includes the taxpayer's copy of the W-2 or W-2c forms, or a copy of the individual's federal or state income tax return (with attached W-2 or W-2c), or employer-prepared wage statements. (All-County Information Notice No. I-07-98, February 3, 1998)

232-4C

Legal resident, noncitizen applicants who are spouses can meet the 40 work quarter requirement by combining qualifying quarters. (All-County Information Notice No. I-62-96, December 9, 1996; §63-405.4 as revised February 1, 1999)

232-4D

For purposes of meeting the 40-credit requirement for legal aliens eligibility, a child (of any age) can use the quarters which are attributable to the child's parent prior to the time the child turned 18, including those earned prior to the child's birth. (All-County Information Notice No. I-57-97, September 10, 1997, §63-405.4, as revised February 1, 1999)

232-5

Cuban/Haitian entrants (as defined in §501(e) of the Refugee Education Assistance Act of 1980) and Amerasian immigrants (admitted pursuant to §584 of Public Law 202, as amended by Public Law 100-461), are eligible aliens for purposes of the FS program for seven (formerly five) years from the date of receiving such status. After the seven-year period has expired, these individuals must possess 40 credits of Social Security benefits, or veteran status, to be eligible for FS benefits. (Public Law (PL) 105-33, §§5302 and 5306; All-County Information Notice No. I-07-98, February 3, 1998, as amended by PL 105-185, June 23, 1998 and All-County Letter (ACL) No. 98-76, September 25, 1998; §63-405.124, .125, effective November 1, 1998, per §63-031.2, revised effective June 1, 2001)

232-6

Individuals who served in the Philippine Commonwealth Army during World War II, or as Philippine Scouts following that war, are considered "veterans" for purposes of §63-405.112(d) now §63-405.3. They are, therefore, potentially eligible for FS benefits as legal aliens who meet alien eligibility requirements. (Public Law 105-33; All-County

Information Notice No. I-07-98, February 3, 1998; §63-405.3, effective November 1, 1998)

232-7

In the Balanced Budget Act of 1997, Public Law 105-33, Congress recognized that the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 restricted FS benefits to thousands of Hmong and Highland Lao veterans who fought in special guerilla units on behalf of the United States during the Vietnamese conflict ineligible for FS benefits.

Congress then issued the following statement:

“It is the sense of the Congress that Hmong and other Highland Lao veterans who fought on behalf of the Armed Forces of the United States during the Vietnam conflict and have lawfully been admitted to the United States for permanent residence should be considered veterans for purposes of continuing certain welfare benefits consistent with the exceptions provided other noncitizen veterans under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.”

(Public Law 105-33 §5566(b))

It was the position of the CDSS that the Balanced Budget Act contained no authority to make these Hmong and Highland Lao veterans eligible for FS as “veterans”, and thus they were ineligible to receive FS benefits based on veteran status. (All-County Information Notice No. I-07-98, February 3, 1998)

However, these individuals and their spouses, unmarried widows or widowers, and unmarried dependent children are potentially eligible for FS benefits effective November 1, 1998 if the tribe rendered assistance to U.S. personnel taking part in a rescue or military operation during the Vietnam era. (All-County Letter (ACL) No. 98-76, September 25, 1998; §63-405.21)

232-7A

The following noncitizens whether "qualified" or not, are potentially eligible for FS:

- .21 A member of a Hmong or Highland Laotian tribe at the time the tribe rendered assistance to U.S. personnel by taking part in a military or rescue operation during the Vietnam era, and the spouse or unmarried dependent child or the unmarried surviving spouse of such deceased tribal member, as long as lawfully residing in the U.S. Under Subsection .212(a), a child means the legally adopted or biological child of the above described Hmong or Highland Laotian. An unmarried dependent "child" is under the age of 18, or a full-time student under the age of 22, or certain other children of deceased tribe members, or certain disabled children over age 18. (Subsection .212(d))

.22 A member of an Indian tribe (under §4(e) of the Indian Self-Determination and Education Assistance Act), including Native Americans who are entitled to cross the border into Mexico or Canada; and an American Indian born in Canada to whom the provisions of §289 of the Immigration and Naturalization Act (8 United States Code §1359) apply.

(§63-405.2, issued February 1, 1999 to be effective November 1, 1998 per §63-031.2, and revised March 2, 2000, retroactive to November 1, 1998 per §63-032.3; definition of child and unmarried dependent child added effective June 1, 2001)

232-8

It is the CDSS position, based on federal instruction, that noncitizen children of naturalized citizens are ineligible for federal FS benefits until a certificate of naturalization is issued. It is also the CDSS position that such children, when under 18 or over 65 years of age, should be provided with FS benefits under the California Food Assistance Program. (All-County Information Notice No. I-07-98, February 3, 1998)

232-8A

Federal law provides that a child born outside of the United States of alien parents becomes a citizen of the United States upon the naturalization of both parents. (8 United States Code (USC) §1432(a)(1))

232-9

In determining the number of Social Security credits earned in a year (beginning in 1997) when the individual earning those credits also received federally [emphasis added] means-tested benefits, add all the earned credits and then subtract credits during those quarters in which the means-tested benefits were received. Thus, as of calendar year 1998, if the individual earned \$5000 in July 1997 (which equals four credits) and also received means-tested benefits in September 1997, the individual would be entitled to three (four minus one) credits. (All-County Information Notice No. I-07-98, February 3, 1998)

232-10

The Two Parent Family CalWORKs program and CFAP are state programs, are not considered "federally means tested", and thus any Social Security credits earned while in receipt of those benefits are counted in determining federal FS eligibility for purposes of meeting the 40-quarter qualifying employment standard for certain legal nonresidents. (§63-405.4; All-County Information Notice No. I-13-01, February 15, 2001)

232-11

It is not necessary, in all instances, to obtain a Consent for Release of Information form in order to access Quarters of Coverage Information from the Social Security Administration (SSA). The Balanced Budget Act, Public Law No. 105-33, provided authority for the SSA to release work information to another public agency without a signed consent form. (All-County Information Notice No. I-07-98, February 3, 1998)

233-1

The CDSS issued emergency FS regulations which provided as follows:

"A portion of the income and the resources of a sponsor and the sponsor's spouse if he or she has executed INS form I-864 or I-864A, shall be deemed to be the unearned income and resources of a sponsored noncitizen and shall be considered in determining the eligibility and/or benefit level of the household of which the sponsored noncitizen is a member.

".491 The sponsored noncitizen is subject to the sponsorship provisions until the sponsored noncitizen:

- "(a) achieves United States citizenship through naturalization; or
 - "(b) has 40 qualifying quarters as specified in Section 63-405.4; or
 - "(c) is no longer a noncitizen lawfully admitted for permanent residence and leaves the United States; or
 - "(d) dies.
- "(1) The sponsor's support obligation also terminates when the sponsor dies."

(§63-503.49, effective June 1, 2001)

233-1A

Prior to June 1, 2001, state regulations in the FS program provided as follows:

Portions of the gross income and the resources of a sponsor and the sponsor's spouse (if living with the sponsor) shall be deemed to be the unearned income and resources of a sponsored alien for three years following the alien's admission for permanent residence to the United States. The spouse's income and resources shall be counted even if the sponsor and spouse were married after the signing of the agreement. (§63-503.49, repealed effective June 1, 2001)

The amount of income and resources deemed to the sponsored alien in accordance with §63-503.492 shall be considered in determining the eligibility and/or benefit level of the household of which the alien is a member.

The following aliens are exempt from provisions for sponsored aliens:

- (a) An alien who is participating in the FS Program as a member of his/her sponsor's household or an alien whose sponsor is participating separate and apart from the alien.

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- (b) An alien who is sponsored by an organization or group as opposed to an individual.
- (c) An alien who is not required to have a sponsor under the Immigration and Nationality Act, such as, but not limited to, a refugee, a parolee, one granted asylum, and/or a Cuban or Haitian entrant.

(§63-503.491, revised and renumbered effective June 1, 2001)

233-2

Some sponsored noncitizens (as defined in §63-102(s)(8)) are exempt from FS sponsorship provisions. These are:

- (a) A noncitizen who is participating in the FS Program as a member of his/her sponsor's household or a noncitizen whose sponsor is participating separate and apart from the noncitizen.
- (b) A noncitizen who is sponsored by an organization or group.
- (c) A noncitizen who is not required to have a sponsor under the Immigration and Nationality Act.
- (d) An indigent noncitizen as determined to have income (as set forth in §§63-102(l)(11) and 63-503.492(d)) that does not exceed 130% of the poverty guideline for the household size..
 - (1) For a 12-month period beginning on the date a noncitizen is determined to be indigent, only the actual amount of income or resources provided to the noncitizen by the sponsor shall be treated as income to the noncitizen. This 12-month period is renewable.
- (e) Certain battered noncitizens, as specified in §63-405.5.

(§63-503.492, effective June 1, 2001, and revised effective March 1, 2002)

233-2A

Prior to June 1, 2001, state FS regulations provided that in the event an alien loses his or her sponsor during the three-year limit on the sponsored alien provisions of this section and does not obtain another, the deemed income and resources of the previous sponsor shall continue to be attributed to the alien until such time as the alien obtains another sponsor or until the three-year period for applying sponsored alien provisions expires, whichever occurs first. However, should the alien's sponsor die, the deemed income and resource of the sponsor shall no longer be attributed to the alien. (§63-503.492(e), repealed effective June 1, 2001)

While the County Welfare Department (CWD) is awaiting receipt or verification from the

alien of the information necessary to carry out the provisions of §63-503.49, the sponsored alien shall be ineligible to participate until all necessary facts are obtained. (§63-503.493(a), revised and renumbered effective June 1, 2001)

233-2B

Federal regulations exclude indigent aliens (called noncitizens in State regulations) from sponsored alien provisions in the FS program using the following criteria:

"An indigent alien that the State agency has determined is unable to obtain food and shelter taking into account the alien's own income plus any cash, food, housing, or other assistance provided by other individuals, including the sponsor(s). For purposes of this paragraph (c)(3)(iv), the phrase 'is unable to obtain food and shelter' means that the sum of the eligible sponsored alien's household's own income, the cash contributions of the sponsor and others, and the value of any in-kind assistance the sponsor and others provide, does not exceed 130 percent of the poverty income guideline for the household's size. The State agency must determine the amount of income and other assistance provided in the month of application. If the alien is indigent, the only amount that the State agency must deem to such an alien will be the amount actually provided for a period beginning on the date of such determination and ending 12 months after such date. Each indigence determination is renewable for additional 12-month periods."

(7 Code of Federal Regulations §273.4(c)(3)(iv), effective January 20, 2001, to be implemented by June 1, 2001)

233-3

A "sponsor" is a person who executed an affidavit of support or similar agreement with INS, on behalf of a noncitizen as a condition of the noncitizen's entry or admission into the United States. (§63-102(s)(7), as amended effective June 1, 2001)

233-4

A "sponsored noncitizen" is a noncitizen "for whom a sponsor has executed an Affidavit of Support (INS Form I-864 or I-864-A) on behalf of the noncitizen, pursuant to Section 213A of the Immigration and Nationality Act." (§63-102(s)(8), as amended effective June 1, 2001)

233-4A

Prior to June 1, 2001, the county was required to obtain information from the sponsored noncitizen as to the income and resources of the sponsor and the sponsor's spouse in order to determine the deemed income and resources of the noncitizen's sponsor. Effective June 1, 2001 the regulations were revised to delete the requirement to obtain information as to the income and resources of the sponsor's spouse. (§§63-300.5(e)(8), renumbered to §63-300.5(e)(8) effective February 21, 2002, and 63-405.72)

233-5

While the county is awaiting receipt and/or verification of information from the sponsored noncitizen, and this information is necessary to carry out the provisions of §63-503.49, the sponsored noncitizen shall be ineligible for FS benefits. (§63-503.494(a), effective June 1, 2001)

233-6

The unearned income deemed available to the sponsored noncitizen is determined by adding the total earned income (less as 20% deduction) and unearned income of the sponsor and the sponsor's spouse (if the spouse has also executed an I-864 or I-864A) at the time the sponsor noncitizen's household applies or is recertified. There is also a deduction equal to the gross FS monthly income eligibility limit for a household equal in size to that of the sponsor, the sponsor's spouse, and any person who could be claimed as a dependent by either spouse. (§63-503.493(a)(1)(A), as revised and renumbered effective June 1, 2001)

233-7

"Resources of the sponsor and sponsor's spouse as determined by Section 63-501 deemed to be that of the noncitizen shall be the total amount of their resources reduced by \$1500." (§63-503.493(b)(1), as revised effective June 1, 2001)

233-8

When an FS household contains a member(s) who is excluded because of ineligible noncitizen status, the eligibility and benefit level of any included household member(s) shall include consideration of: "...a pro rata share of the ineligible noncitizen's income and deductible expenses and all of the ineligible noncitizens' resources." (§63-503.443, as added effective June 1, 2001)

233-9

In the "Verification" regulations, the sponsored noncitizen is required to provide information in accord with §63-405.7 except as specified in §§63-301.71 and .822.

The state regulation goes on to say: "The deeming rules apply only to sponsored noncitizens whose sponsors have signed an Affidavit of Support INS Form I-864 and I-864A."

(§63-300.55(h), effective June 1, 2001, revised and renumbered to §63-300.5(e)(8), effective February 21, 2002)

233-10

Federal regulations provide that in terms of deeming a sponsor's income and resources, "only in the event a sponsored alien is an eligible alien in accordance with paragraph (a) of this section will the State agency consider available to the household the income and resources of the sponsor and spouse." This means that if the sponsored alien is ineligible for FS benefits, one can count only the alien's (not the sponsor's) income and resources when deeming to the alien's FS eligible family members. (7 Code of Federal Regulations §273.4(c)(2))

234-1

A household must be living in the county in which it files an application. The county shall not interpret residency to mean domicile which is sometimes defined as a legal place of residence or principal home. The county shall not impose any durational residency requirements nor shall residency require an intent to remain permanently in the county. The county shall not require an otherwise eligible household to reside in a permanent dwelling or have a fixed mailing address as a condition of eligibility. (§63-401)

236-1

Certain legal noncitizens of the United States are eligible for CFAP if they are not eligible for federal FS benefits based solely on their immigration status under the Personal Responsibilities and Work Opportunity Reconciliation Act of 1996. Legal presence can be verified through INS at application, i.e., the SAVE system, Legal noncitizens whose time limit for federal FS has expired but who would otherwise be eligible for federal FS benefits are eligible for CFAP. (§63-403.1, as revised effective October 1, 2001)

236-1A

Prior to October 1, 2001, state regulations provided that certain legal noncitizens of the United States (U.S.) shall be eligible for CFAP if they were legally present in the U.S. prior to August 22, 1996, and are not eligible for federal FS benefits, based solely on their immigration status. Legal noncitizens who are otherwise eligible, but who entered the U.S. on or after August 22, 1996 and do not meet the conditions as specified in §63-403.11, were initially only eligible for CFAP until September 30, 2000. (All sunset dates were eliminated by Assembly Bill No. 429, amending W&IC §18930(b)(4).) Legal presence can be verified through INS at application, i.e., Systematic Alien Verification for Entitlements (SAVE) System. Noncitizens who are not eligible for the federal program are eligible for CFAP if they are one of the following:

- .11 A legal noncitizen who entered the U.S. on or after August 22, 1996, if he or she is sponsored and is able to provide verification that: a) the sponsor has died; b) the sponsor is disabled as specified in §63-403.5; or c) the applicant, after entry into the U.S. is a victim of abuse as specified in §63-403.2, by the sponsor or the sponsor's spouse.
- .12 A legal noncitizen who is an abused/battered noncitizen spouse or child or the parent or child of the abused/battered noncitizen as specified in §63-405.5.
- .13 A legal noncitizen who is a Cuban or Haitian entrant as defined in §501(e) of the Refugee Assistance Act of 1980.
- .14 A legal noncitizen whose immigration status meets the eligibility criteria of the federal FS program which were in effect on August 21, 1996. These criteria were:

- (a) Noncitizens lawfully admitted for permanent residence as immigrants as defined in §§101(a)(15) and 101(a)(20) of the Immigration and Nationality Act (INA), including those provided with an affidavit of support to overcome §212(a)(4) of the INA.
 - (b) Noncitizens who entered the U.S. prior to January 1, 1972, or a later date as required by law, and have continuously maintained residency, and are eligible for citizenship, are considered to be lawfully admitted for permanent residence as a result of an exercise of discretion by the Attorney General pursuant to §249 of the INA.
 - (c) Noncitizens who entered the U.S. as refugees, pursuant to §207 of the INA.
 - (d) Noncitizens who entered the U.S. as asylees, pursuant to §208 of the INA.
 - (e) Noncitizens who were paroled into the U.S. as a result of an exercise of discretion by the Attorney General for emergent reasons or reasons deemed strictly in the public interest pursuant to §212(d)(5) of the INA.
 - (f) Noncitizens for whom the Attorney General has withheld deportation pursuant to §243 of the INA.
 - (g) Noncitizens classified as aged, blind, or disabled in accordance with §1614(a)(1) of the Social Security Act, admitted for permanent or temporary residence pursuant to §245A(b)(1) and (h) of the INA.
 - (h) Noncitizens who, on or after June 1, 1987, were special agricultural workers admitted for temporary residence in accordance with Section 210(a) of the INA.
 - (i) Noncitizens granted temporary resident status pursuant to §245A of the INA at least five years prior to applying for FS, who subsequently attained permanent resident status.
- and
- (j) Noncitizens admitted for temporary residence as additional special agricultural workers in the period October 1, 1989 through September 30, 1993 in accordance with §210(a) of the INA.
- .15 Noncitizens other than those described in §§63-403.14(a) through (j), such as, but not limited to, visitors, tourists, diplomats, and students who enter the U.S. temporarily with no intention of abandoning their residence in a foreign country, shall not be eligible to participate in CFAP.

(§63-403.1, issued March 2, 2000, to be effective November 1, 1998, per §63-032.3 and repealed effective September 30, 2001; W&IC §18930(b)(4); All-County Letter No. 02-22)

236-2

Noncitizens who are ineligible for CFAP solely because they entered the U.S. on or after August 22, 1996 can establish CFAP eligibility if they can provide verification that their sponsor is dead or "disabled", or that they are a victim of "abuse" by their sponsor or their sponsor's spouse. (§63-403.12, effective February 1, 1999)

A sponsor is "disabled" if the disability is expected to last at least 30 calendar days and significantly impairs the individual's ability to be regularly employed or participate in welfare-to-work activities. (All-County Information Notice (ACIN) No. I-01-00, January 4, 2000)

"Abuse" means battering or subjecting a victim to extreme cruelty by: Physical acts that resulted in or threatened to result in physical injury; sexual abuse; sexual activity involving a child in the home; being forced to participate in nonconsensual acts or activities; threats of, or attempts at, physical or sexual abuse; mental abuse; neglect or deprivation of medical care; or stalking. (§63-403.121, effective February 1, 1999)

During the period from October 1, 1999 and thereafter, those noncitizens ineligible for CFAP solely because they entered the U.S. on or after August 22, 1996 can establish eligibility for CFAP even if they do not meet the sponsorship provisions set forth in §63-403.12, above.

(All-County Letter No. 99-78, October 1, 1999 implementing W&IC §18930(b)(4); ACIN No. I-80-00, August 7, 2000; ACIN No. I-67-01, implementing Assembly Bill (AB) 429)

236-3

Effective September 1, 1998, the California Food Assistance Program (CFAP) program provides state funded food stamps to legal non-citizens whose immigration status meets the eligibility criteria of the federal FS program in effect on August 21, 1996 but who were not eligible for federal FS benefits solely due to immigration status under PRWORA. The initial CFAP program provided state funded food stamps for immigrants over the age 65 and under age 18. The CFAP that became effective September 1 provides FS benefits for applicable immigrants between the ages of 18 and 65. Due to a change in federal law, almost all those receiving CFAP prior to September 1 will have federal FS eligibility reinstated effective November 1, 1998. (All-County Letter (ACL) No. 98-76, September 25, 1998)

236-4

Between November 1, 1998 and March 2, 2000, state regulations provided as follows:

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| <p style="text-align: center;">SHD Paraphrased Regulations - Food Stamps 230 Citizenship-Aliens-Residency</p> |
|---|

Persons 65 years of age or older or under 18 years of age who are noncitizens of the United States shall be eligible for the CFAP if they were legally present in the United States prior to August 22, 1996, and meet the following criteria:

- .11 The person's immigration status meets the federal FS Program criteria in effect on August 22, 1996 and the noncitizen is ineligible for federal FS benefits solely based on that status. These specific criteria are set forth in §63-403.111 as follows:
- (a) Those admitted for permanent residence as immigrants as defined in §§101(a)(15) and 101(a)(20) of the Immigration and Nationality Act (INA), including those provided with an affidavit of support to overcome §212(a)(15) of the INA;
 - (b) Those who entered the U.S. prior to January 1, 1972, or a later date as required by law, and have continuously maintained residency, are ineligible for citizenship, but are considered to be permanent residents as a result of an exercise of discretion by the Attorney General pursuant to §249 of the INA;
 - (c) Those who entered the U.S. as refugees, pursuant to §207 of the INA;
 - (d) Those who entered the U.S. as refugees, pursuant to §208 of the INA;
 - (e) Those who were paroled into the U.S. as a result of an exercise of discretion by the Attorney General for emergent reasons or reasons deemed strictly in the public interest pursuant to §212(d)(5) of the INA;
 - (f) Those for whom the Attorney General has withheld deportation pursuant to §243 of the INA;
 - (g) Those classified as aged, blind, or disabled in accordance with §1614(a)(2) of the Social Security Act, admitted for permanent or temporary residence pursuant to §§245A(b)(1) and (h) of the INA;
 - (h) Those granted temporary resident status pursuant to §245A of the INA at least five years prior to applying for food stamps, who subsequently attained permanent resident status;
 - (i) Those who, on or after June 1, 1987, were special agricultural workers admitted for temporary residence in accordance with §210(a) of the INA; and
 - (j) Those admitted for temporary residence as additional special agricultural works in the period October 1, 1989 through September 30, 1993 in accordance with §210A(a) of the INA.

(§63-403.1, effective February 1, 1998, modified by All-County Letter No. 98-76, September 25, 1998, and revised February 1, 1999; revised again March 2, 2000, to ensure CFAP households who lost benefits because of the regulations are entitled to retroactive benefits back to November 1, 1998, per §63-032.3)

236-6

A CFAP recipient who is also a CalWORKs recipient must be exempt from Welfare-to-Work (WtW) requirements (under §42-712) or comply with those requirements. (§§63-411.11, .21)

CFAP recipients who do not receive CalWORKs (including those under WTW sanction) must either be exempt from work requirements (i.e., disabled which means that the disability is expected to last at least 30 calendar days and significantly impairs the individual's ability to be regularly employed or participate in WTW activities; 60 years of age or older; under 16 years old; 16 to 18 years old attending full time a school in grade twelve or below, a vocational school, or technical school; or a migrant or seasonal farmworker receiving unemployment benefits or the county has determined that sufficient farm work is not available) or work the minimum number of hours established for WTW participants at §42-711.4. The work must be compensated at the lesser of the applicable state or federal minimum wage. (§§63-411.1, as revised effective March 2, 2000; All-County Information Notice No. I-01-00, January 4, 2000)

236-7

The CFAP applicant is ineligible unless exempt from, or meeting CFAP work requirements. The CFAP recipient shall lose eligibility unless exempt, or meeting CFAP work requirements. (§63-411.31)

Prior to November 1, 1999, the provisions of the FSET Program (§63-407), the ABAWD work requirement, and the Voluntary Quit regulations (§63-408) did not apply to CFAP recipients. (§63-411.33, as modified by All-County Letter No. 99-78, October 1, 1999 with October 25, 1999 errata, implementing W&IC §18930.5)

236-8

Non-CalWORKs CFAP recipients must meet the federal FS requirements established for Able Bodied Adults Without Dependents (in §63-410) effective November 1, 1999. (All-County Letter No. 99-78, October 1, 1999 with October 25, 1999 errata, implementing W&IC §18930.5) Nonassistance CFAP must also meet the general FS work requirements of §63-407.42-.44 (All-County Information Notice No. I-76-00, July 26, 2000)